

Remarks

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

The Office Action is non-final. Claims 1-10 are currently pending. Claims 1, 5 and 7 have been amended to further clarify and define the invention. Support for the common amendment to claims 1 and 5 is based on page 10, lines 16-18, and page 11, lines 9-11, of the present specification. Support for claim 7 is based on page 46, lines 8-10 of the present specification.

Entry of the present Amendment is respectfully requested.

Request for Acknowledgement of Priority under 35 U.S.C. 119

For item 12 on the Office Action Summary page within the Office Action dated September 18, 2009, Applicants note that the Examiner failed to acknowledge the claim for foreign priority, and has failed to acknowledge that all certify copies of the priority documents have been received in this national stage application.

The Examiner is again requested to acknowledge the Claim for Priority and receipt of the priority documents. Applicants also note that the Notice of Acceptance dated December 19, 2006 confirms that the priority documents have been received by the USPTO.

Rejection Under 35 U.S.C §102(b), or in the alternative, 35 U.S.C §103(a)

Claims 1, 3 and 4 stand rejected under 35 U.S.C. § 102(b) as anticipated, or in the alternative, rejected under 35 U.S.C. § 103(a) as unpatentable over Rek, U.S. Patent No. 4,350,715 (hereinafter “Rek”), as further evidenced by Firestone, Physical and Chemical Characteristics of Oils, Fats and Waxes, AOCS Press, Champaign, Ill., pp. 70 and 113 (1999) (hereinafter “Firestone”).

Applicants respectfully traverse.

The Examiner's Position:

The Examiner asserts that Rek anticipates the claimed invention based on the disclosures set forth by the Examiner.

The Examiner then concludes that if the claimed invention is not anticipated by the Rek reference, it would have been obvious to one of ordinary skill in the art to use a blend of 65% butter fat and 35% palm kernel oil and would expect the fat blend to have a fatty acid content that falls within the range of claim 1 and that photo-degradation resistance would have been expected from the composition of Rek.

Applicants respectfully disagree.

Based on the following, Applicants contend that the Examiner's position is not supportable.

Applicants will first address the rejection under 35 U.S.C. § 102(b).

The presently claimed invention discloses the prevention of photodegradation of an oil-in-water type emulsion comprising fat and non-fat milk solids by using a non-milk fat which has a specified fatty acid composition. Therefore, the fatty acid composition of non-milk fat is very important. The presently amended claims define the fatty acid composition of non-milk fat.

Differences between the Invention and the Rek Reference

In contrast, the Rek reference discloses a blend of butter fat and palm kernel oil. However, Applicants note that butter fat is milk fat. The Rek reference discloses a Non-milk fat that is only palm kernel oil.

Therefore, Rek does not disclose the fat ingredient of the presently claimed invention since 35% palm kernel oil does not satisfy the fatty acid composition defined by the presently amended claims.

Thus, based on the above, the claimed invention is clearly distinguished from the Rek reference.

Therefore, the Rek reference does not teach each and every feature of claim 1 as amended. See MPEP § 2131 - to anticipate a claim, the reference must teach every element of the claim.

Accordingly, claim 1 is not anticipated by the Rek reference. Since claims 3 and 4 depend from claim 1, these claims are also not anticipated by the Rek reference.

With regards to the alternative rejection under 35 U.S.C. § 103(a), Applicants respectfully submit that based on the following comments, the Examiner's position is not supportable, thus making the presently claimed invention unobvious over Rek in view of Firestone.

Applicants incorporate the above comments concerning the present invention and the comments concerning the Rek reference and respectfully submit that the presently claimed invention is unobvious over Rek based on the differences between the present invention and the Rek reference, discussed above.

Additionally, Applicants point out that by adding non-milk fat, the fatty acid composition of which is specified in the amended claims, can prevent photodegradation of the oil-in-water type emulsion comprising fat and non-fat milk solids, which is an unexpected result.

Further, in the amended claims, the content of nonfat milk solids and the amount of the fat ingredient is defined. Moreover, in amended claim 7, the ratio of the nonfat milk solids to the fat ingredient in the oil-in-water type emulsion is also defined. Emulsions having such compositions are not obvious from Rek and Firestone.

Accordingly, in light of the amended claims and the above remarks, it follows that the presently claimed invention is unobvious to one of ordinary skill in the art. The secondary reference, Firestone, does not remedy the deficiencies of the Rek reference.

Therefore, Applicants respectfully submit that the Rek reference neither anticipates nor renders obvious the presently claimed invention and request reconsideration and withdrawal of the present rejection.

Rejections Under 35 U.S.C §103(a)

The following rejections under 35 U.S.C. § 103(a) are presented by Examiner.

Claims 1, 3, 4, 7, 9 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rek, as further evidenced by Firestone.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Rek, as further evidenced by Firestone, as applied to claims 1, 3 and 4, and further evidenced by Potter, Food Science, Second Edition, The Avi Publishing Company, Westport, CT, p. 142 (1973) (hereinafter “Potter”).

Claims 2, 6 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rek, as further evidenced by Firestone, as applied to claims 1, 3 4, 7, 9 and 10, alone or if necessary, in view of Arcadipane U.S. Patent No. 5,393,551 (hereinafter “Arcadipane”).

Applicants respectfully traverse the above rejections.

Applicants incorporate the above comments concerning the Rek and Firestone references and respectfully submit that the presently claimed invention is unobvious over Rek and Firestone, and Rek and Firestone in view of Potter or Arcadipane.

Additionally, Applicants provide the following comments.

Regarding the rejection to claim 5, the Examiner asserts that photodegradation is suppressed by blocking out the light via packaging. Obviously, photodegradation is suppressed

by blocking out light. However, an object of the present invention is to provide an oil-in-water type emulsion for light-exposed food having photodegradation-resistance. Applicants note that it is important that the presently claimed invention is designed for suppressing photodegradation of light-exposed foods (*e.g.*, dessert and cakes) which cannot be covered from light for reasons such as to emphasize the freshness and safety of food, as well as to help consumers have a sense of safety with regards to the product (see page 1, line 20-page 2, line 19, and page 4, line 16- page 5, line 8 of the present specification). Therefore, it is clear that such a step, blocking out light with packaging, is not included in the invention of claim 5 as indicated in the description of the present specification.

Therefore, it is evident to one of ordinary skill in the art that Potter would not provide any teaching or suggestion concerning the objectives of the presently claimed invention and how to achieve them.

Thus, Applicants submit that Firestone, Potter and Arcadipane do not remedy the deficiencies of the Rek reference, discussed above. Therefore, even if Rek was combined with the above secondary references, the result of the combinations would still not suggest the presently claimed invention.

Applicants respectfully request reconsideration and withdrawal of the above rejections.

Rejection Under 35 U.S.C §112, Second Paragraph

Claim 5 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Applicants have amended claim 5 to clarify the how the fat composition is used.

Applicants therefore submit that amended claim 5 particularly points out and distinctly claims the subject matter which they regard as the invention.

Applicants request reconsideration and withdrawal of the rejection.

Issue Regarding Form PTO-892 Reference

In the outstanding Office Action, the Examiner indicated on form PTO-892, Notice of References Cited, the Francis *et al.* reference (Reference V). However, the Francis *et al.* reference was not indicated within a rejection in the Office Action, nor available from the USPTO PAIR website. It appears that this reference was mistakenly added to form PTO-892.

Conclusion

Applicants respectfully submit that all of the rejections raised by the Examiner have been overcome, and that the present application now stands in condition for allowance.

Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Paul D. Pyla at the telephone number below, in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized to charge payment or credit any overpayment to Deposit Account No. 23-0975 for any additional fees required under 37 C.F.R. §§1.16 or 1.17.

Respectfully submitted,

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